IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1097 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULLA AHMED HAJI ISAM DADA

Versus

DIVISIONAL GENERAL MANAGER

Appearance:

1. Civil Revision Application No. 1097 of 2000

MR YN RAVANI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR AJAY R MEHTA for Respondent No. 2

MR DHIRENDRA MEHTA for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/11/2002

ORAL JUDGEMENT

#. Rule. Mr.Ajay Mehta waives service of rule for respondent nos.1 and 2 and Mr.Dhirendra Mehta waives service of rule for respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has filed Regular Civil Appeal under Section 96 of the Civil Procedure Code before the District Court, Bharuch. In filing the said appeal, there is a delay of about 5 months and few days. The petitioner herein, submitted the application for condonation of delay and the reason given in the said application is that, since the mother of the petitioner was not keeping good health, he was busy in looking after his ailing mother and in the meanwhile, his sister also came from foreign country to look after his ailing mother. Under these circumstances, since the petitioner was mentally disturbed, delay has occurred. The Assistant Judge, Bharuch, however, came to the conclusion that the petitioner has not produced any satisfactory evidence to substantiate his case and even there is no sufficient cause to condone the delay. Under these circumstances, delay was not condoned and the appeal of the petitioner is not heard for want of registration.

#. I have heard all the concerned advocates for the parties.

#. In my view, the Appellate Court has not properly considered the scope of Section 5 of the Limitation Act. The Apex Court, in the case of Collector, Land Acquisition, Anantnag and another Vs Mst.Katiji and others, reported in AIR 1997 SC 1353, has laid down certain principles for deciding the delay condone applications. The Apex Court has held in para 3 as under.:

> "The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the

other Courts in the hierachy. And such a liberal approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation

> of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

In my view, the appellate Court should have condoned the delay considering the averments made in the delay condonation application and instead of rejecting the said application, the appellate Court should have registered the appeal filed by the petitioner. Under these circumstances, the application of the petitioner is allowed. Delay is condoned. Effect of this order is that, now the Registry of the District Court will register the appeal of the petitioner, and, thereafter, the appellate Court shall decide the said appeal on its own merits and in accordance with law. Mr.Dhirendra Mehta states that, respondent No.3 may be awarded costs in case the delay in filing the appeal is condoned. The said request is reasonable. In the facts and circumstances of the case, the petitioner is directed to pay costs of Rs.500/- (Rupees five hundred only) to respondent No.3. Such costs to be deposited before the appellate Court within a period of one month from today. The respondent No.3 will be entitled to withdraw the aforesaid amount unconditionally.

#. In view of what is stated above, this revision

application is allowed. Rule is made absolute to the extent indicated above with costs, as quantified above.

(P.B.Majmudar,J)
(pathan)